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Technology Center 2600

In re Application of)
Carl H. Meyerhoffer, et al.) DECISION
Application No. 08/993,271) ON
Filed: December 18, 1997) PETITION
For: NETWORK INTERFACE DEVICE FOR)
HIGH SPEED DATA LINES)

This is in response to the Petition Pursuant to 37 CFR 1.137, MPEP 711.03(c), filed June 30, 2000, which is treated as a petition to withdraw the holding of abandonment for the above-identified application.

This application was held abandoned for failure to timely pay the issue fee due within three months from the mail date of November 22, 1999, of the Notice of Allowance and Issue fee Due. A Notice of Abandonment was mailed June 12, 2000.

Petitioner asserts that the Notice of Allowance was never received. In support of the petition, petitioner submits a copy of the docket records where the action would have been docketed had it been received and a declaration from Shirley Hopkins, a docketing manager, stating that the Notice of Allowance was never received.

In the absence of any irregularity in the mailing of an Office action, there is a strong presumption that the office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance of November 22, 1999, was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice of Allowance on the part of the Patent and Trademark Office.

The petitioner has not made a sufficient showing of nonreceipt of the Notice of Allowance in accordance with the requirements set forth above. The petition does not include: (1) a statement *from the practitioner* stating that the Notice of Allowance was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Notice of Allowance was not received; and (2) a reference to the docket records in the practitioner's statement.

The petition is **DENIED**.

Should petitioner desire reconsideration, he or she should supplement this petition with a statement and docket records as outlined above.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision.

The application file will be held in Technology Center 2700 to await a renewed petition. If no renewed petition is filed within two months of the mail date of this decision, the application file will be forwarded to the Office of Petitions for consideration of the alternative petition under 37 CFR 1.137.


James L. Dwyer, Director
Technology Center 2700
Communications & Information Processing